

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3830 OF 2006

Ms. Snigdha Maheshwari .. Petitioner
v/s.
The State of Maharashtra and others .. Respondents

Dr. Virendra V. Tulzapurkar, senior counsel with Mr. A.S. Kamat, Mr. H.V. Pradhan and Ms. Sneha P. Chodnekar i/by M/s. Crawford Bayley & Co. for the petitioner.

Ms. Jyoti S. Pawar, Additional Government Pleader for the respondents.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.

DATED : 13TH MARCH, 2007

P.C.

Rule. Heard forthwith.

2. The petitioner is a student who has not passed the 10th standard from the institution in the State of Maharashtra. The petitioner, however, has passed 12th standard from an institution in the State of Maharashtra. The petitioner wanted to appear for the MHT-CET-2006. Clause 4.9 of the application for appearance provides as under:-

“Exception for SSC (10th Std. Or equivalent examination):-
Candidate who has passed SSC or equivalent examination from an institute outside Maharashtra and HSC or equivalent examination from within Maharashtra is eligible for seeking admission to the courses in Health Sciences provided that he is domicile of Maharashtra.”

3. The petitioner, accordingly, had applied for the domicile certificate in terms of the resolution of the respondents-State by application dated February 10, 2006 through her legal guardiance. That came to be rejected and consequently, the present petition challenging the said order. The reason given is that the petitioner has not completed 10 years residence in the State of Maharashtra in terms of the Government resolution and the instructions. Clause 4 of part 3 reads as under:-

“When the domicile claimed is of recent origin the claim should be scrutinized with special care. The fact that the applicant owns a residence in the State of Bombay is not by any means a conclusive proof that he is domiciled therein. It should be considered along with other circumstances of his case.

Clause 5 then reads as under:-

“The fact that a candidate was born and educated in the State of Bombay, and that he and his parents through whom he claims his domicile have resided in the said State for a period of not less than 10 years immediately preceding the date of application (necessary breaks being allowed), strongly support a claim to a domicile in the State of Bombay but other relevant circumstances including the fact whether the candidate's mother tongue is one of the regional languages or dialects of the State of Bombay must also be taken into account.”

4. From the above, it would be clear that even if a person applying for domicile, does not have residence of 10 years, it is still open to apply under clause 4. As to when a person can be said to have changed domicile from one place to another would be a pure question of fact depending on the facts of each case. The documentary evidence supplied has not been considered on

the basis that the applicant and his daughter's birth place is outside the State of Maharashtra and permanent stay is less than 10 years. Residence of 10 years is not the sole criteria for granting domicile certificate as can be seen from the resolution nor the place of birth. The affidavit filed on behalf of the respondents by Smt. Bharati M. Kale, reference has been made to the said G.R. and the instructions. It is also set out that the petitioner's claim for domicile is not bonafide as the residence is temporary in nature for the purpose of service, trade or profession.

5. At the hearing, the learned AGP on behalf of the State has sought to produce additional material to show that the petitioner had not complied with other requirements. That at any rate had not been communicated to the petitioner. Our attention has been drawn to the judgment of the Supreme Court in the case of Dr. Pradeep Jain v. Union of India and others, AIR 1984 SC 1420. From that judgment what follows is that there is only one domicile namely domicile in India. In other words, there cannot be something called State domicile. However, it is permissible for the State to provide a term of residence to apply for admission to an educational institution. This, the Supreme Court has said is not violative of Article 16(2) of the Constitution. Rules/instructions issued by the State of Maharashtra for appearance of the MH-CET examination is not based on the residence but based on domicile.

6. Considering the above, in our opinion, the order passed has to be set aside and the matter remanded back to the respondent authority to re-hear the petitioner on the material produced and thereafter, pass an appropriate order according to law. Considering that the matter is urgent, the entire exercise be completed within 15 days from today. Rule is made absolute according with no order as to costs.

The parties may be provided ordinary copy authenticated by Court Associate.

(F.I. REBELLO, J.)

(R.M. SAVANT, J.)